



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of the Army - Reconsideration.

File: B-255777.2

Date: May 9, 1994

DIGEST

Claims Group's settlement allowing carrier a refund or setoff for damage to a video cassette recorder (VCR) is reversed where evidence shows that the VCR was in working order shortly before being tendered to carrier; the damage is consistent with the VCR having been dropped; and the carrier has not proven that it was not responsible for the damage.

DECISION

The Department of the Army, U.S. Army Claims Service, requests review of our Claims Group's settlement allowing American World Forwarders a refund of \$147 that the Army set off against the carrier for damage to an Army member's video cassette recorder (VCR). We reverse the settlement.

The carrier claimed that it was not liable because the damage to the VCR was internal, and that the shipper did not prove that the VCR had sustained transit-related damage. Our Claims Group allowed the carrier's claim because there was no showing that the VCR was in working condition when tendered to the carrier, or of rough handling or other negligence on the carrier's part (such as external damage). In requesting reconsideration, the Army argues that the record includes sufficient circumstantial evidence for the logical inference that the VCR was damaged in transit. The Army has included with the request additional evidence in that regard.

To establish a prima facie case of carrier liability, the shipper must show (1) that he tendered the property to the carrier in a certain condition; (2) that the property was not delivered by the carrier or was delivered in a more damaged condition; and (3) the amount of loss or damage. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1965). The burden of proof then shifts to the carrier to show that it was not liable for the loss or damage.

We agree with the Army that the record established a prima facie case of carrier liability. The Army has furnished a letter from the shipper stating, in part:


"... the VCR was functional prior to moving from Ft Wainwright, AK to Ft Carson, CO. We used it often prior to moving with no problems ... I assure you that the VCR was in working condition when packed and stored."

The record thus contains evidence that the property was tendered to the carrier in working order and that it did not work when it was delivered.

Moreover, the VCR did not work after delivery because a normally sturdy internal component (a printed circuit card) was physically broken. The record shows that such damage is consistent with the item having been dropped.

Since a prima facie case of carrier liability has been established, the burden of presenting evidence in rebuttal shifts to the carrier. Jones Motor Co., Inc., B-200410, July 8, 1981. Here, the carrier has not shown that its actions were not responsible for the VCR's broken internal component.

The Claims Group's settlement is reversed.

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